



## DEPARTMENT OF PUBLIC SAFETY POLICIES & PROCEDURES



POLICY NUMBER	
OPR:51	
EFFECTIVE DATE: 03/17/2008	ORIGINAL ISSUED ON: 03/17/2008
REVISION NO:  ORIGINAL	

**SUBJECT: INVESTIGATION OF PERSONS SUSPECTED OF DRIVING  
UNDER THE INFLUENCE**

### 1.0 PURPOSE

The purpose of this policy is to establish consistent guidance to all commissioned officers of the Department of Public Safety in the detection, apprehension, and incarceration of persons that are operating a motor vehicle while under the influence of intoxicating liquor or drugs.

### 2.0 POLICY

It is the policy of the Department of Public Safety (DPS) to conduct thorough and complete investigations resulting in successful prosecutions of offenders who are suspected of driving while impaired. DPS will use directed patrols, sobriety checkpoints, patrol saturations and community awareness education to reduce the number of alcohol crashes throughout the state. DPS shall share statistical data with the Traffic Safety Bureau and the New Mexico Department of Transportation, which will be used to identify high probability areas with a propensity for DWI related crashes and arrests.

### 3.0 APPLICABILITY:

This policy applies to all commissioned officers of the Department of Public Safety.

### 4.0 REFERENCES

**New Mexico State Statutes Sections 66-8-101 through 66-8-104**

**Implied Consent Act – Sections 66-8-105 to 66-8-112**

**CALEA Chapter 61.1.11 – Traffic**

**National Highway Traffic Safety Administration (NHTSA) DWI Detection and SFST Manual**  
**New Mexico Scientific Laboratory Division Breath Alcohol Testing Instruments Regulations**

### 5.0 DEFINITIONS

- A. Implied Consent** - Any person who operates a motor vehicle within this state shall be deemed to have given consent, subject to the provisions of the Implied Consent Act (NMSA 1978, Sections 66-8-105 through 66-8-112) to chemical test(s) of his breath or blood or both, approved by the scientific laboratory division of the Department of Health pursuant to the provisions of NMSA 1978, Section 24-1-22 as determined by a law enforcement officer, for the purpose of determining the drug or alcohol content of his blood if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or drug.

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- B. Breath Alcohol Concentration (BrAC)** - Percentage of alcohol by volume as determined by obtaining proper breath samples from an approved machine. The concentration is measured in grams/210 liters of breath.
- C. Blood Alcohol Concentration (BAC)** - Percentage of alcohol by volume as determined by obtaining a proper blood sample utilizing the appropriate and current blood kit as furnished by Scientific Lab Division (SLD). The concentration is measured in grams/100ml.
- D. Deprivation Period** - Measured time period; Minimum 20 minutes starting the moment a suspect is deprived of placing anything foreign into their mouth i.e. chewing gum, chewing tobacco, narcotics and ending when an arrested DWI offender initially begins giving breath samples.
- E. Exigent Blood-Draw** - Specific to areas of the state where persons involved in suspected DWI crashes are injured and are transported via ambulance or helicopter to a hospital out of state. It is incumbent for officers in these areas to consult with their local paramedics, flight crews and the District Attorney in their respective area regarding the use of exigent circumstance blood draws. The blood draw ideally should be collected prior to the departure of the arrested suspect if this does not interfere with the medical condition of the offender. This applies specifically to felony investigations such as **Vehicular Homicide, Great Bodily Injury or 4<sup>th</sup> or subsequent DWI**. Refer to NMSA 1978, Section 66-8-103.
- F. Drug Recognition Expert (DRE)** - Police officer with specialized training in detecting persons under the influence of substances other than alcohol, i.e. marijuana, cocaine, methamphetamines, heroin and prescription narcotics. District Commanders shall be responsible for keeping qualified drug recognition experts and key operators in their respective districts.
- G. Great Bodily Injury** – An injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.
- H. Probable Cause for Arrest** – Articulable facts or circumstances that would lead a reasonable officer to believe that a crime has been committed or is being committed and that the person arrested committed the crime.
- I. Felony DWI** – A felony DWI arrest occurs when it is learned through the investigation that the arrested suspect has at least three prior DWI convictions.
- J. Vehicular Homicide and Great Bodily Injury** – These offenses are third degree felonies that can only be charged when a driver is operating a motor vehicle while under the influence of intoxicating liquor and/or drugs or when the driver's actions reach the threshold of reckless driving; and is involved in a crash that results in death or great bodily injury. Refer to NMSA 1978, Section 66-8-101 (1985).

**6.0 PROCEDURE**

- A. DWI Countermeasures** – One of the New Mexico State Police's primary enforcement duties is the arrest of drivers under the influence of intoxicating liquor and/or drugs. This is done in an attempt to reduce alcohol and/or drug related traffic offenses in the State of New Mexico. All patrol officers are trained in administering Standardized Field Sobriety Tests (SFST) as established by NHTSA. All officers also receive certification on authorized breath alcohol testing instruments. All patrol officers receive regular updates to their SFST training and Intoxilyzer certifications. Patrol officers are expected to conduct DWI enforcement as part of their normal everyday duties and will direct their efforts to any areas that show a propensity for DWI violations. District commanders have the authority to create special DWI enforcement units or to participate in DWI Task Forces in their jurisdiction, if manpower allows. Enforcement efforts are supplemented by special state and federal funds designated for DWI prevention efforts.
- B.** As part of an officer's patrol duties and special enforcement activities, officers will make routine contact with drivers, conduct traffic stops and act as community caretakers. Officers should always be cognizant of the signs and symptoms of impaired driving. Officers shall conduct thorough and comprehensive investigations to determine whether a driver is impaired by alcohol or drugs.
- C.** Officers must determine if probable cause/articulable reasonable suspicion for a traffic stop or further detention is necessary to determine whether a driver is impaired. Probable cause/articulable reasonable suspicion for a traffic stop for a DWI-related traffic violation can include but is not limited to:
1. Turning with a wide radius
  2. Straddling the center line or lane markers; failure to maintain lane
  3. Near collisions
  4. Weaving, swerving, drifting
  5. Driving off roadway
  6. Driving into oncoming traffic
  7. Stopping in a traffic lane without cause
  8. Following too closely
  9. Erratic braking
  10. Signaling inconsistent with driving patterns
  11. Driver enters an approved DWI or Drivers License, Registration and Insurance checkpoint and face to face contact reveals evidence of possible impairment.
  12. In situations where the vehicle is parked and the driver has actual physical control of the vehicle, the driver should be investigated as operating the motor vehicle.

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- D. Traffic Stop** - If probable cause/articulable reasonable suspicion exists an officer shall, unless exigent circumstances or when responding to a higher priority call, make an investigative traffic stop in accordance with training and department policy.

Officers should note observations made during their initial traffic stop; e.g. reason for the contact (violation), observation of the stopping sequence, did the driver attempt to flee, etc.

- E. Face to Face Contact With Driver** - Upon initial contact with the driver the officer will request a valid driver's license, registration, and valid proof of financial responsibility, if applicable.

1. Upon approach, officers shall be cognizant of the driver's actions, and will conduct an investigation which may result in the arrest of the driver, issuance of a citation or release of the driver with no formal enforcement action.
2. The officer shall observe the general appearance and demeanor of the driver for common indicators of impairment, which may include but not be limited to:
  - a. Bloodshot or watery eyes
  - b. Irrational behavior, belligerence
  - c. Disheveled or soiled clothing
  - d. Difficulty operating doors or windows
  - e. Difficulty locating proper identification
  - f. The odor of an alcoholic beverage or drugs, such as marijuana.
  - g. Plain view indicators such as open containers of alcohol or drug paraphernalia
  - h. Slurred speech
  - i. Admission to consuming alcohol or drugs prior to the stop
  - j. Impaired dexterity
2. In the event an arrest is made the officer shall indicate his/her observations in the Offense/Incident Report.

- F. Pre-Arrest Screening** - If reasonable suspicion exists that the driver may be operating the vehicle while under the influence of intoxicating liquor or drugs, the officer shall request the driver to perform standardized field sobriety tests.

1. Officers should be aware of other physiological symptoms which may be affecting the driver's ability to operate the vehicle safely, such as drowsiness or a medical condition. In such cases officers shall provide aide to ensure the safety of all persons, up to and including requesting assistance from medical personnel, as appropriate.
2. The officer will ensure that the site chosen to perform the tests is not only safe from traffic but also provides a secure location for the driver to perform the tests.

3. Those department vehicles equipped with a video recorder, shall record the entire DWI-related traffic stop for evidentiary purposes. If the departmental unit is not equipped with a video recorder an audio recording shall be made for evidentiary purposes. The video and/or audio recording shall be maintained in accordance to department policy OPR:19 *Use of Recording Equipment*.
4. NHTSA training requires the officer, prior to psychophysical testing, ask the subject if he/she has any "physical impairment or disability." These conditions must then be considered when evaluating the results of the tests.
5. Standardized Field Sobriety Tests are recommended and should be given in the same order unless a physiological condition exists which would preclude this. In those situations alternative tests may be used to assist an officer in determining the level of impairment.
6. NHTSA has scientifically validated three standardized field sobriety tests. They are the Horizontal Gaze Nystagmus, Walk and Turn and the One Leg Stand. Refer to NHTSA manual for a description of each test.
7. If a driver refuses to perform the SFST's or alternate tests the officer shall advise the driver that the refusal may be used in court against them. The officer shall only make an arrest when supported by probable cause. Probable cause can be established based upon information obtained during detection phases 1 and 2, including initial observation of vehicle in motion, observation of the stop sequence, face to face contact, observation of the exit from the vehicle, and any other evidence obtained prior to the refusal.
8. Officers shall document his/her observations (test results) in an Offense/Incident report along with any DWI specific forms used in their jurisdiction.

**G. Physical Arrests** - A physical arrest will be made in all cases where probable cause exists. An exception to this is when, for medical reasons, the subject is hospitalized and an actual physical arrest would endanger the driver's medical condition.

**H. Disposition of Vehicles:** All vehicles will be processed according to department policy OPR:36 *Vehicle Towing and Inventory*. Under no circumstance will vehicles be left at the scene of the arrest.

**I. Implied Consent** - After making the arrest the officer will read the Implied Consent Warning to the driver. In cases where the driver is unconscious the driver shall be deemed to have given consent. All refusals will be recorded on Notice of Revocation form and in the officer's Offense/Incident report. Drivers have no right to speak to an attorney prior to their answer. Miranda warnings shall not be read prior to the implied consent advisory unless a custodial interrogation needs to occur.

**J. Chemical Testing methods** - In all cases the driver must first perform the officer's test before he/she can demand to be tested by an independent source. The department will be responsible for the cost of the independent test. In all cases where the driver has been arrested for a felony DWI offense and a refusal is given for implied consent purposes, a search warrant shall be obtained for the collection of a blood sample.

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1. **Breath Alcohol Testing** - The officer shall test the driver on the Intoxilyzer 8000 or approved collection instrument. The officer is responsible for administering the test according to SLD regulations. All approved instruments will be maintained by the district appointed key operator(s) according to SLD regulations.
2. **Blood Testing** – Blood testing shall only be performed by those personnel recognized by the State of New Mexico to perform such tests. The officer is responsible for administering the test according to SLD regulations.
3. **Secondary or Independent Blood Tests** – The arresting officer shall fulfill requests by drivers for secondary or independent blood tests. This will be done by ensuring that the arrestee has access to a telephone and phone book in order to contact someone to take the second sample. If the arrestee requests a second test it should be administered at a law enforcement facility or local medical facility. The secondary test must be carried out in a timely manner and shall utilize an independent blood test kit. Department blood test kits will not be used for secondary or independent blood test samples. These test kits shall be maintained at the district office for a period of no longer than 30 days.

Donors, who want the blood tested, must submit a written request for a chemical test to the DPS facility storing the blood sample. If no written request is received from the donor, the sample will be destroyed as abandoned property. It is the responsibility of the arrested driver to inform the arresting officer within 30 days after the arrest, of the laboratory where he/she wants the independent sample to be sent for testing. Secondary or Independent blood samples must be refrigerated and stored as evidence.

- K. Adult Booking Procedures** - In all cases where the driver's blood alcohol concentration is .08 or higher, or upon a refusal, the driver shall be booked and incarcerated at the appropriate detention facility. For drivers with a blood alcohol concentration of .04 to .07 officers should consult with a supervisor, if available, before incarceration. If blood alcohol concentration is between .04 and .07 a blood draw should be conducted to test for the presence of drugs. For any driver with a blood alcohol concentration under .04 refer to Section M.

All commercial motor vehicle (CMV) drivers with a blood alcohol concentration of .04 or higher, or upon refusal shall be booked and incarcerated at the appropriate detention facility.

- L. Juvenile Booking Procedures** - For administrative purposes only, juvenile denotes anyone less than 21 years of age. Drivers from age 18 to 20 will be booked and incarcerated following the adult booking procedures listed above. Prior to incarcerating a juvenile under 18 years of age, the officer shall contact the local juvenile probation officer to clear the arrest through central intake. If approval to incarcerate is denied the arrested juvenile will be released to a parent or guardian. Refer to department policy OPR:38 *Juvenile Enforcement and Custody* for further details regarding arrests of juveniles.

- M. Procedures for adult subjects testing below .04** - In every case where a driver tests below .04 the officer shall adhere to the following protocol:

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1. The officer can request assistance from another officer, if available in a reasonable amount of time, to re-evaluate the subject utilizing the standardized field sobriety tests.
2. The officer will attempt to locate a drug recognition expert (DRE) officer if available.
3. If the DRE recognizes the presence of drugs the officer shall attempt to obtain a blood sample. The DRE's evaluation can aid in strengthening probable cause.
4. If a DRE is not available the officer may request a blood sample to test for the presence of drugs, pursuant to the New Mexico Implied Consent Act.
5. The officer shall notify the on call supervisor who shall assist the officer in making a determination whether to continue the detention or release the subject.
6. If probable cause no longer exists to continue with the arrest, the on-call supervisor shall make arrangements for the driver to be released, and arrangements made for their safe continuation of their trip. The vehicle should be released to the owner at no cost. If the driver is exhibiting symptoms not induced by drugs or alcohol, the officer should assist the driver in obtaining medical attention, if appropriate.

**N. Felony DWI Arrest Procedures** - The investigation of felony DWI will follow the same procedures as detailed above, however, in felony cases where the arrested driver refuses to comply with the New Mexico Implied Consent Act, a search warrant shall be obtained for his/her blood. This is crucial short lived evidence that will aid in a successful prosecution so a nighttime warrant may be necessary.

### **O. Vehicular Homicide and Great Bodily Injury Investigation Procedures**

1. Secure crash scene and assist in emergency medical aid.
2. Photograph and document crash scene with diagrams.
3. Properly document individuals involved in the crash. Identify driver(s) and passengers of vehicles involved. Obtain statements from individuals involved, and issue Miranda warnings when appropriate.
4. Identify witnesses and obtain statements.
5. Secure vehicle(s) for evidence processing.
6. Secure a breath test or blood draw; if a refusal occurs then obtain a search warrant for the sample.
7. If exigent circumstances arise attempt to secure a blood draw on scene and then secure a search warrant.
8. Notify district commander.
9. Request assistance from the Special Investigations Division (SID), if a source investigation is needed.
10. Request independent analysis of crash is conducted by Accident Reconstruction Team.

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**P. Routing of documentation** - The officer shall provide the driver with a copy of all documents surrounding the arrest. Only Uniform Traffic Citations specifically for the offense of DWI will be used.

1. Administrative: Copies of The DWI citation and notice of revocation shall be provided to the Motor Vehicle Division within seven days of the arrest via US Mail.
2. Court: Copies of all documents shall be provided to the court of jurisdiction within 48 hours of the arrest or the next business day should the arrest occur on a Friday evening.
3. Record keeping: A copy of all documents will be maintained at the appropriate district offices.

**Q. DWI Checkpoint Protocol** - All DWI checkpoints will be conducted in accordance with the provisions provided by the City of Las Cruces v. Betancourt decision. Those provisions are:

1. The selection of site & procedural operations of the checkpoint must be made and established by supervisory law enforcement personnel rather than field officers.
2. Restrictions and discretion of field officers will be limited.
3. The safety of the public and the officers must be paramount.
4. The location of the checkpoint must be reasonable.
5. The time and duration of the checkpoint must be reasonable.
6. Indicia of the official nature of the checkpoint must be immediately apparent.
7. The length and nature of detention must be reasonable.
8. The checkpoint must advance publicity to raise the deterrence value of the checkpoint.

### **7.0 ATTACHMENTS**

**A. RECEIPT OF BLOOD SAMPLE FOR ADDITIONAL CHEMICAL TEST**

**B. STANDARD FIELD SOBRIETY TEST OUTLINE**

### **8.0 APPROVAL**

APPROVED BY: s/John Denko  
DPS Cabinet Secretary

DATE: March 17, 2008



New Mexico Department of Public Safety

## Receipt of Blood Sample for Additional Chemical Test

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Pursuant to Section 66-8-109 NMSA 1978, the below-listed individual has exercised his/her right for an opportunity to arrange for a physician, licensed professional or practical nurse or laboratory technician or technologist who is employed by a hospital or physician of his/her own choosing to perform a chemical test in addition to any test performed at the direction of a law enforcement officer. The blood sample will be collected and maintained in a secure facility for no longer than thirty (30) days from the date of collection.

A written request for a chemical test shall be delivered to the Department of Public Safety facility storing the blood sample. The written request shall contain the name and address of the laboratory conducting the testing as approved by the scientific laboratory division of the department of health, pursuant to the provisions of Section 24-1-22 NMSA 1978. The sample will be delivered to the laboratory with instructions to mail the test results to the address on this form along with a copy to the Department of Public Safety.

If no written request is received within thirty (30) days from the date of collection, the sample will be destroyed.

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### Case Information:

Citation #: \_\_\_\_\_ CAD #: \_\_\_\_\_ Date of Arrest: \_\_\_\_\_  
Arresting Officer: \_\_\_\_\_ Sample Stored At: \_\_\_\_\_

### Donor Information:

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Address: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

I certify that I have delivered a copy of this document to the above listed donor.

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Officer Signature

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Date

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Time

I acknowledge receipt of this form and understand my sample will be destroyed after 30 days following the date of collection if I do not provide a written request for testing.

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Donor Signature

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Date

---

Time

## Standard Field Sobriety Test Outline

### National Highway Traffic Safety Administration Recognized Field Sobriety Tests:

1. **Horizontal Gaze Nystagmus** The maximum number of clues per eye is three with an overall total for both eyes of six.
  - a. As the eye moves from side to side does it move smoothly or does it jerk noticeable otherwise known as lack of smooth pursuit.
  - b. Does the eye jerk distinctly when it is moved as far to the side as possible, otherwise known as distinct nystagmus at maximum deviation.
  - c. As the eye moves toward the side does it start to jerk before it has moved through a 45 degree angle (**approximately shoulder width**). Otherwise known as onset prior to 45 degrees.
2. **Walk and Turn:** The walk and turn test is a divided attention test consisting of two stages the instruction stage and the walking stage.
  - a. In the instruction stage the subject should stand on the line with feet heel to toe keeping arms to the side and listening to instructions. Proper starting position is right foot directly in front of left
  - b. In the walking stage, the subject takes nine heel to toe steps down the line, turns in the prescribed manner and returns down the line with nine heel to toe steps while counting out loud. The subject should keep their hands to their side while walking.
  - c. During the turn the subject should keep one foot on the line, pivot and use the other to take several small steps to complete the turn.
  - d. Officers administering this test should observe the subject for eight clues: can't balance during instructions, starts too soon, stops while walking, doesn't touch heel to toe, steps off the line, uses arms to balance, loses balance on turn or turns incorrectly or takes wrong number of steps.
  - e. Once instructions are complete the officer must demonstrate the test. It is recommended that the administering officer demonstrate three proper steps and a proper turn. The officer must demonstrate utilizing an odd number of steps insuring that the turn is completed in the proper direction.
3. **One leg Stand:** The one leg stand is a divided attention test consisting of two stages: The instruction stage and the balancing and counting stage.
  - a. In the instruction stage, the subject should stand with feet together, keep arms to the sides, and listen to instructions.
  - b. In the balancing and counting stage, the subject should stand on one foot and hold the other foot straight approximately six inches off the ground, toes pointed forward and parallel to the ground while staring at the upraised foot and counting aloud from one thousand and on to one thousand and thirty.
  - c. Officers carefully observe the suspects performance and look for four specific clues: sways while balancing, uses arms to balance, hops or puts foot down.